

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

RICK J. DEYOE and REALTEX
DEVELOPMENT CORPORATION,

Plaintiffs,

V.

ROLLINGWOOD GP, LLC, and
GARDNER CAPITAL, INC.,

Defendants.

Case No. 4:20-cv-00107-SNLJ

PLAINTIFFS' MOTION TO DISMISS
DEFENDANT ROLLINGWOOD'S COUNTERCLAIMS

Plaintiffs Rick J. Deyoe (“Deyoe”) and Realtex Development Corporation (“Realtex”) (collectively, “Plaintiffs”) file this Partial Motion to Dismiss Defendant Rollingwood GP, LLC’s Counterclaims pursuant to Rules 12(b)(6) and 9(b), and respectfully state as follows:

1. For the reasons stated herein and in Plaintiffs’ memorandum in support of this Motion, filed concurrently herewith and incorporated herein by reference, Plaintiffs move pursuant to FED. R. CIV. P. 12(b)(6) and 9(b) to dismiss the fraud and breach of fiduciary duty counterclaims asserted by Defendant Rollingwood GP, LLC (“Rollingwood”).

2. Rollingwood does not allege the content, date(s), or location(s) of the allegedly fraudulent omissions and misstatements that serve as the basis of its fraud counterclaim. Nor does Rollingwood allege a legally cognizable fiduciary relationship

owed by Deyoe to Rollingwood in support of its fiduciary breach counterclaim. Accordingly, both of these counterclaims should be dismissed.

Respectfully submitted,

Dated: April 9, 2020

By: /s/ Jesse Z. Weiss

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***Attorneys for Plaintiffs Rick J. Deyoe
and Realtex Development Corporation***

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing instrument has been served on all counsel of record pursuant to the Federal Rules of Civil Procedure this 9th day of April 2020.

/s/ Jesse Z. Weiss
Jesse Z. Weiss